XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(14)

मामला क्रमांक Cr.A. 304/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT — Shankar Bhat, S/o Bhagirathi Bhat, aged 36 years, Occupation Agriculture, R/o Vill Sitapur (Adarsh Nagar), Police Station Sitapur, District Sarguja (CG).

-Versus-

RESPONDENT — State of Chhattisgarh, Through Police Station Sitapur, District Sarguja (Ambikapur) (CG).

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

21-8-2007

Shri Avinash K. Mishra, counsel for the appellant.

Shri D.K. Gwalre, Addl. Public Prosecutor for the State.

Heard.

Oral judgment dictated on *dias*.

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 24-11-2001 passed by the Sessions Judge, Ambikapur, Sarguja, in Sessions Trial No.322/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of his wife Saroj and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2) Case of the prosecution, in brief, is that Saroj (since deceased) was the wife of the accused/appellant. The accused is in the habit of consuming liquor. He used to doubt the fidelity of his wife. On 24-2-2000 at about 8.30 p.m. in the night accused came to the house after consuming liquor and asked his wife for providing food to him. The deceased woke up and went to answer the call of nature. Thereafter she was preparing for providing food to her husband. The accused asked her as to whether she had gone to have sexual affair with anybody and started beating the deceased. At that time sons of the accused & the deceased namely, Arjun (PW-1) & Amit (PW-2) were at the residence. They heard the cries of their mother and saw that her clothes were burnt. Arjun extinguished the fire of his mother with the help of *Gudri* (bedding). The accused set his wife on fire after pouring kerosene on her body. Hearing the cries, Indrajeet Singh (PW-11) and others came. They took Saroj to Ambikapur hospital. Matter was reported by Arjun (PW-1) in Police Station. Saroj succumbed to the burn injuries on 14-4-2000. Merg intimation (Ex.P/3) was given by Bhagirathi (father of the accused). Investigating Officer left for the place where the body of Saroj was lying. After giving notice (Ex.P/6) to the Panchas, he prepared inquest (Ex.P/7) on the body of Saroj. Site plan (Ex.P/8) was prepared. Postmortem on the body of Saroj was conducted in the Government hospital, Sitapur by Dr. M. Nikunj (PW-8). Postmortem report is Ex.P/9. Doctor opined that the cause of death was due to septicaemic shock as a result of burn injuries. Burn injuries were examined by the In-charge hospital, Sitapur, on the request of the Investigating Officer under Ex.P/10-A. Dr. N.R. Beck (PW-9) found that there were burn injuries on the face, parietal, left side of the face, backside of the chest, back side of buttock & hip region. Doctor opined that the burn injuries were up to 40%. On 14-4-2000, the Station House

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Officer M.K. Singh (PW-14) registered the First Information Report (Ex.P/18). The Investing Officer seized the burnt clothes and plastic container containing of about one liter of kerosene. The same were sent to the Forensic Science Laboratory, Sagar, for examination from where the report (Ex.P/22) was received. As per the FSL report, kerosene smell was emanating on the burnt clothes.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur.

4) In order to establish the charge against the accused/appellant, the prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that his wife herself set her on fire when she was under intoxication of the liquor.

5) Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard Shri Avinash K. Mishra, learned counsel for the appellant and Shri D.K. Gwalre, learned Addl. Public Prosecutor for the State.

7) In this case sons of the accused & deceased namely Arjun & Amit, who witnessed the incident, were examined by the prosecution as PW-1 & PW-2, respectively, but they have turned hostile.

8) However, during investigation dying declaration of Saroj was recorded by Executive Magistrate Rajesh Sahi (PW-10). He has stated that on 24-2-2000 at 10.30 he recorded the statement of Saroj in Sitapur hospital. Dr.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Dutta gave certificate to the effect that Saroj was in a fit state of mind to give statement. He put question to Saroj and she replied. He recorded the statement (Ex.P/13) of Saroj in which she stated that her husband Shankar used to doubt her fidelity; therefore, on the fateful day after saying her as *Rundi*, at about 8.30 p.m. in the night he set her on fire after pouring kerosene on her body. Executive Magistrate has stated that Ex.P/13 i.e. dying declaration bears his signature. In cross-examination, he has stated that it is incorrect to say that Saroj was not in a position to give statement. It is incorrect to say that the deceased did not gave her statement. In fact whatever stated by the deceased he recorded. Deceased herself stated that her husband set her on fire after pouring kerosene on her body. She was saved by her son Arjun. The defence has not been able to elicit any circumstance in cross-examination to discredit the evidence of this witness. He is an independent witness. He has categorically stated that after satisfying himself from Dr. Dutta that Saroj was in a fit state of mind to give statement, he recorded the statement (Ex.P/13). On Ex.P/13 at place "B to B" Doctor has stated that the statement was taken in his presence. There is nothing before us to disbelieve the evidence of Executive Magistrate, who is a Government servant.

9) Moreover, the above dying declaration is corroborated by the evidence of Indrajeet Singh (PW-11), who is the resident of the same vicinity. PW-11 stated that on the fateful day at about 9.00 p.m. in the night Arjun son of the accused & the deceased came to him and said that his mother has been set on fire after pouring kerosene on her body by his father. Therefore, he went to the house of Shankar and saw the wife of the accused, who was lying in burnt condition in the courtyard. There were burn injuries on the backside, chest and hands. Thereafter he along with the son of the accused took the wife of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused to the hospital. When he enquired from Saroj as to how she has sustained the burn injuries, she disclosed that her husband set her on fire after pouring kerosene on her body, thereafter her son brought *Gudri* (bedding) and extinguished the fire. After the incident, accused ran away. In cross-examination, he has stated that the deceased and the accused both were in the habit of consuming liquor. He has further stated that it is incorrect to say that Saroj disclosed him that she herself set her on fire.

10) Therefore, in view of the above evidence of the Executive Magistrate (PW-10) & Indrajeet Singh (PW-11), it is established that the accused set Saroj on fire after pouring kerosene on her body. The above evidence is also corroborated by the medical evidence. As per the evidence of Dr. N.R. Beck (PW-9) there were burn injuries up to 40% on the body of Saroj. He prepared report vide Ex.P/10. Therefore, involvement of the accused in setting Saroj on fire after pouring kerosene on her body is established beyond reasonable doubt and to this extent, we do not find any illegality or infirmity in the judgment of learned trial Court.

11) Learned counsel for the accused/appellant argued that the appellant was in drunken condition and hungry. He set Saroj on fire, she sustained only 40% burn injuries and she was set on fire on 24-2-2000 whereas she died on 14-4-2000 i.e. after 1 month 20 days of the incident. From the examination of Dr. K.K. Dutta (PW-13) & Dr. N.R. Beck (PW-9), the deceased herself left the hospital and she did not receive proper treatment. Even she was advised to go to Ambikapur for proper treatment, but she did not went there for receiving the treatment and without proper treatment she died. Learned counsel invited the attention of the Court towards the evidence of Dr. M. Nikunj (PW-8), who

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conducted postmortem on the body of Saroj. He has stated that pus formation was there in the body of the deceased, even meggots were present in the body of Saroj and body was putrefied. She died on account of septicaemic shock. Learned counsel further argued that in view of the medical evidence, the offence against the accused does not travel beyond Section 304 Part-II of the Indian Penal Code.

12) On the other hand, learned counsel for the State supported the judgment of the trial Court.

13) In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence. As per the prosecution case, the accused used to doubt the fidelity of his wife. On the fateful day, he came to the house at about 8.30 p.m. in the night; he was in drunken condition and asked his wife for providing food. His wife went outside the house to answer the call of nature, thereafter she returned and was preparing for providing food to the accused. As the accused was doubting her fidelity, in the first instance he abused her in filthy language, thereafter, set her on fire after pouring kerosene on her body and ran away. As per the medical evidence, Saroj sustained 40% burn injuries, she died about 1 month 20 days after the incident. As per the evidence of the Doctors, in Sitapur hospital no facilities were there for treating the patients who sustain burn injuries. The deceased was advised to go to District hospital, Ambikapur, but she did not went there. Even she left the hospital in the midst when she was being treated. Even when she came to the hospital for dressing of the injuries, she was advised by the Doctors to get herself treated, but she declined to get herself admitted in the hospital. Therefore, it appears that Saroj died on account of negligence as she failed to

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

take proper treatment. Dr. N.R. Beck (PW-9) has stated that as the blood was not transfused that is why she died and there was possibility of survival on account of proper treatment.

14) In view of the above facts and circumstances of the case, it cannot be said that the injuries were sufficient in the ordinary course of nature to cause death. Therefore, offence against the accused does not travel beyond Section 304 Part-I of the Indian Penal Code

15) In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside, instead thereof he is convicted under Section 304 Part-I of the IPC and sentenced to undergo R.I. for 10 years. It is stated that the accused is in detention since 23-6-2000 till today. The accused shall be entitled for set off of the period of sentence he had already undergone.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

Gowri